

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U S DISTRICT COURT E D N Y

★ OCT 19 2012 ★

**LONG ISLAND OFFICE**  
ORDER  
12-CV-2293 (JFB)(WDW)

-----X  
MICHAEL COOK,

Plaintiff,

-against-

HOTEL CONNECTIONS LTD., KEN  
SHANLEY, CAROLYN BARNETT, JOEL :  
ROSENBERG, and JAMES CATO, :

Defendants.  
-----X

JOSEPH F. BIANCO, District Judge:

On May 9, 2012, *pro se* plaintiff Michael Cook ("Cook" or "plaintiff") commenced this action by filing a complaint and a motion to proceed *in forma pauperis*. By Order dated May 14, 2012, this Court denied plaintiff's motion to proceed *in forma pauperis*. Plaintiff paid the filing fee on May 25, 2012. By letter dated May 31, 2012, the *pro se* office advised plaintiff that, pursuant to Rule 4 of the Federal Rules of Civil Procedure, plaintiff had a responsibility to serve the summons and complaint on the defendants. By Order dated June 13, 2012, the Court advised plaintiff that, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, plaintiff must serve the defendants by September 6, 2012, and warned plaintiff that failure to serve, or provide good cause for such failure, would result in dismissal of the action without prejudice. Plaintiff has failed to serve the defendants or communicate with the Court in anyway.

Dismissal is warranted under Rule 4(m), which provides that "[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). In this case, Plaintiff has

failed to serve the defendants in this action within 120 days of filing the complaint. Plaintiff has also failed to communicate with the Court. Moreover, plaintiff was warned that failure to serve the defendants by September 6, 2012, or provide good cause for such failure, would result in dismissal of this action without prejudice. Accordingly, because plaintiff has failed to serve the defendants or provide good cause for the failure to serve, the claims against the defendants should be dismissed without prejudice under Rule 4(m). *See Zapata v. City of New York*, 505 F.3d 192, 199 (2d Cir. 2007) (finding district court did not abuse discretion in dismissing complaint under Rule 4(m) where plaintiff made no effort to effect service with 120-day period, failed to request an extension, and offered no reasonable excuse for the delay). Therefore,

IT IS HEREBY ORDERED that this action is dismissed without prejudice. The Clerk of the Court shall close this case.

SO ORDERED.

\_\_\_\_\_  
JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated:           October <sup>19</sup>~~16~~, 2012  
                    Central Islip, New York